

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

_____)	
BITMANAGEMENT SOFTWARE GMBH,)	
)	No. 16-840 C
Plaintiff,)	
)	Senior Judge Edward J. Damich
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	
_____)	

THIRD-PARTY UNOPPOSED MOTION FOR ORDER ALLOWING DAVID COLLEEN TO TESTIFY AT TRIAL BY VIDEOCONFERENCE

Pursuant to Rule 43 of the Rules of the Court of Federal Claims (“RCFC”), Third-Party David Colleen moves for an order allowing him to testify at trial by videoconference. Trial is currently scheduled in Washington, D.C. from April 22-30. Mr. Colleen respectfully submits that requiring him to travel to Washington, D.C. would impose a significant hardship on him.

Undersigned counsel discussed the possibility of Mr. Colleen’s testimony by videoconference with both Defendant’s counsel and Plaintiff’s counsel. Counsel for both Parties do not oppose this motion.

RCFC 43(a) allows the Court to “permit testimony in open court by contemporaneous transmission from a different location” upon a showing of “good cause in compelling circumstances and with appropriate safeguards.” RCFC 43(a). Mr. Colleen resides and works in Bonny Doon, California, more than 2,500 miles from Washington, D.C. In addition to his full-time employment in Bonny Doon, Mr. Colleen has significant family responsibilities as the primary caregiver for his wife who suffers from health issues.

Requiring Mr. Colleen to travel to Washington, D.C. would constitute a significant hardship to his family responsibilities.

To minimize this burden, Mr. Colleen requests that the Court issue an order directing him to testify by videoconference from undersigned counsel's office in San Francisco, California. Undersigned counsel has confirmed that the videoconferencing system has been used for other adjudicatory matters. Additionally, undersigned counsel's Information Technology specialist has already reached out to the Court's staff to schedule a test of the videoconferencing system.

The Government estimates that the time needed for Mr. Colleen's direct testimony is three to four hours.

Accordingly, Mr. Colleen respectfully submits that good cause exists to allow him to testify at trial by videoconference.

A proposed Order is attached hereto as Exhibit 1.

Dated: April 11, 2019

Respectfully submitted,

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s/ Robert S. Metzger

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